In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 484

DOROTHEA M. SCROGGINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioner was employed as a "food service worker" in the Public Health Hospital in Baltimore, Maryland. In April, 1965, the Public Health Service applied to the Civil Service Commission for petitioner's disability retirement for psychiatric reasons. Supporting statements by two psychiatrists were forwarded with the application (Deft. Exs. 7 and 8). Also forwarded were a memorandum by petitioner's supervisor describing the events leading up to the application (Deft. Ex. 4), and copies of correspondence with the petitioner (Deft. Exs. 9, 10, and 14).

On May 4, 1965, the Civil Service Commission informed petitioner that the application had been submitted and advised her that she could undergo a psychiatric examination at the Commission's expense (Deft. Ex. 18). Petitioner declined this examination (Deft. Exs. 19 and 20).

The Commission's Bureau of Retirement and Insurance approved the application and advised petitioner of her appeal rights (Deft. Ex. 21). Her attorney requested a review of the decision (Deft. Ex. 23). The Commission's Board of Appeals and Review again called for a Commission-financed examination by an independent psychiatrist, and at her counsel's urging petitioner consented. In a detailed, three-page report the examining psychiatrist concluded that petitioner suffered from a "Paranoid reaction in a setting of artificially produced menopause" and was disabled for the position she held (Deft. Ex. 29). The Board of Appeals and Review affirmed the action of the Bureau of Retirement and Insurance (Deft. Ex. 32).

At petitioner's request, the decision was placed before the full Commission. Petitioner supplemented the material before them with several statements from physicians to the effect that petitioner was a "perfectly healthy woman with an artificially induced menopause * * * fit for any kind of duty compatible with her age" (Deft. Ex. 41), "in good control of her mental faculties and not considered to be mentally ill" (Deft. Ex. 42), "in good condition, with no evidence of psychiatric illness" (Deft. Ex. 43), and afflicted by "no mental condition that would necessarily interfere with her being employed by the Federal Government"

(Deft. Ex. 44). On July 28, 1966, the Commissioners, having "completed their review" of the case, determined that "the action of retiring [petitioner] for disability reasons was justified" (Deft. Ex. 46).[1]

Petitioner then instituted this action to recover back pay in the Court of Claims, challenging the Commission's approval of her disability retirement. The court granted the government's motion for summary judgment. In an opinion by Judge Davis, the court concluded that petitioner's procedural rights had been respected, that there had been no misconstruction of the governing statutes, and that there had been no defect going to the heart of the administrative process. Since petitioner's claim turned on a "pure conflict of medical evidence" (Pet. App. 12), as to which the Commission's resolution is expressly made conclusive and "not subject to review," 5 U.S.C. (Supp. II) 8347(c), her petition was dismissed.

2. Petitioner does not appear to dispute that the court below was correct in holding that the "finality" section of the Retirement Act precludes judicial review of the Commission's evaluation of the medical evidence. See *Gaines* v. *United States*, 158 Ct. Cl. 497, certiorari denied, 371 U.S. 936; *Ellmore* v. *Brucker*, 236 F. 2d 734 (C.A.D.C.), certiorari denied, 352 U.S. 955; *Murphy* v. *Wilson*, 236 F. 2d 737 (C.A.D.C.), certiorari denied, 352 U.S. 954; *Cerrano* v. *Fleishman*, 339 F. 2d 929 (C.A. 2), certiorari denied, 382 U.S. 855; *Chafin* v. *Pratt*, 358 F. 2d 349 (C.A. 5), certiorari denied, 385 U.S. 878. She does contend, however, that the finality provision, as ap-

[1] Petitioner's annuity was fixed at $136.00 per month.

plied to her case, violates the Due Process Clause of the Fifth Amendment. This argument rests upon the alleged unreliability of the psychiatric diagnoses originally submitted with the retirement application.[2]

Apart from the fact that this point was not raised below, it does not, in any event, merit review by this Court. The objection is directed to the weight and importance the Commission may have placed on these reports. But Congress is free to provide, as it has in structuring personnel procedures, that the administrative determination of purely factual matters by the Civil Service Commission is final and not subject to review. *Keim* v. *United States*, 177 U.S. 290; cf. *Cafeteria Workers* v. *McElroy*, 367 U.S. 886. The finality provision has been consistently interpreted and understood, as the court below held (Pet. App. 9), as permitting judicial review to insure that there has been no substantial departure from important procedural requirements, no error in the interpretation of the applicable legislation, and no other deficiency vitally affecting the administrative determination. See, *e.g.*, *Cantrell* v. *United States*, 240 F. Supp. 851 (W.D.S.C.), affirmed, 356 F. 2d 915 (C.A. 4). The record before the Commission in this case shows that petitioner was afforded her full procedural rights under the controlling rules and regulations and that the agency fairly exercised its ultimate responsibility for determining disability *vel non*.[3]

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[2] See Judge Skelton's concurring opinion in the court below (Pet. App. 13-17).

[3] Despite some concern about the wisdom of the Commission's failure to specify detailed hearing procedures for mak-

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

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ing these determinations (Pet. App. 10, 15-16), the court below was unanimous in agreeing that the procedures followed in this case were within the Commission's constitutional and statutory authority. There are now in force new regulations which should eliminate such objections for future disability retirement cases. See 33 Fed. Reg. 7715-7717 (effective July 1, 1968).

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